

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WEE HIVE, LLC : **Case No.**
Plaintiff, : **Judge:**
v. : **COMPLAINT**
THE LAZY BEE BREAKFAST LLC : **JURY TRIAL DEMAND**
Defendant. :

Plaintiff Wee Hive, LLC, by its attorneys and for its Complaint, alleges as follows:

NATURE OF THE ACTION

1. This is an action for federal trademark infringement under the Lanham Act (15 U.S.C. § 1051, et seq.), federal unfair competition (15 U.S.C. § 1125(a)(1)(A)), state law unfair competition (OHIO REV. CODE § 4165.02), and common law unfair competition.

2. Plaintiff Wee Hive, LLC (“Wee Hive”) is the owner of all rights and title in and to the “SLEEPY BEE” service mark for use in connection with café and restaurant services, and the corresponding federal registration for the mark under U.S. Trademark Registration No. 4,631,986 (“the ’986 Registration). *See* Exhibit A, attached hereto.

3. Defendant The Lazy Bee Breakfast LLC (“Lazy Bee Breakfast”) is illegally using, and has been illegally using, the “THE LAZY BEE” mark in connection with café and restaurant services, without Wee Hive’s authorization, permission, or license.

4. Lazy Bee Breakfast’s conduct is a violation of Wee Hive’s federal service mark rights. Wee Hive seeks all legal and equitable remedies permitted under the federal Lanham Act and state and common law for Lazy Bee Breakfast’s wrongful conduct.

THE PARTIES

5. Wee Hive is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 3098 Madison Road, Cincinnati, Ohio 45209.

6. On information and belief, Lazy Bee Breakfast is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 126 Front Street, Berea, Ohio 44017.

JURISDICTION AND VENUE

7. This action arises under the trademark laws of the United States, the Lanham Act, 15 U.S.C. § 1051 et seq.

8. Federal question jurisdiction is conferred to this Court pursuant to 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121(a), and this Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337.

9. On information and belief, personal jurisdiction exists over Lazy Bee Breakfast in this Court due to, *inter alia*, Lazy Bee Breakfast's residency as a corporation in the State of Ohio; the location of Lazy Bee Breakfast's principal place of business in the State of Ohio, and specifically, in this judicial district; Lazy Bee Breakfast's conducting business activity in this judicial district; and Lazy Bee Breakfast's management and maintenance of a website at <https://www.thelazybeeberea.com> in the State of Ohio, and specifically, from a location in this judicial district.

10. Venue in this Court is proper under 28 U.S.C. §1391(b) and (c).

FACTUAL BACKGROUND

11. From at least as early as October 31, 2013, Wee Hive has been using the "SLEEPY BEE" service mark, and it has specifically been using that mark since at least as early as December 13, 2013 in commerce for café and restaurant services.

12. On or about March 25, 2014, Wee Hive filed an application with the United States Patent and Trademark Office ("USPTO") to federally register its

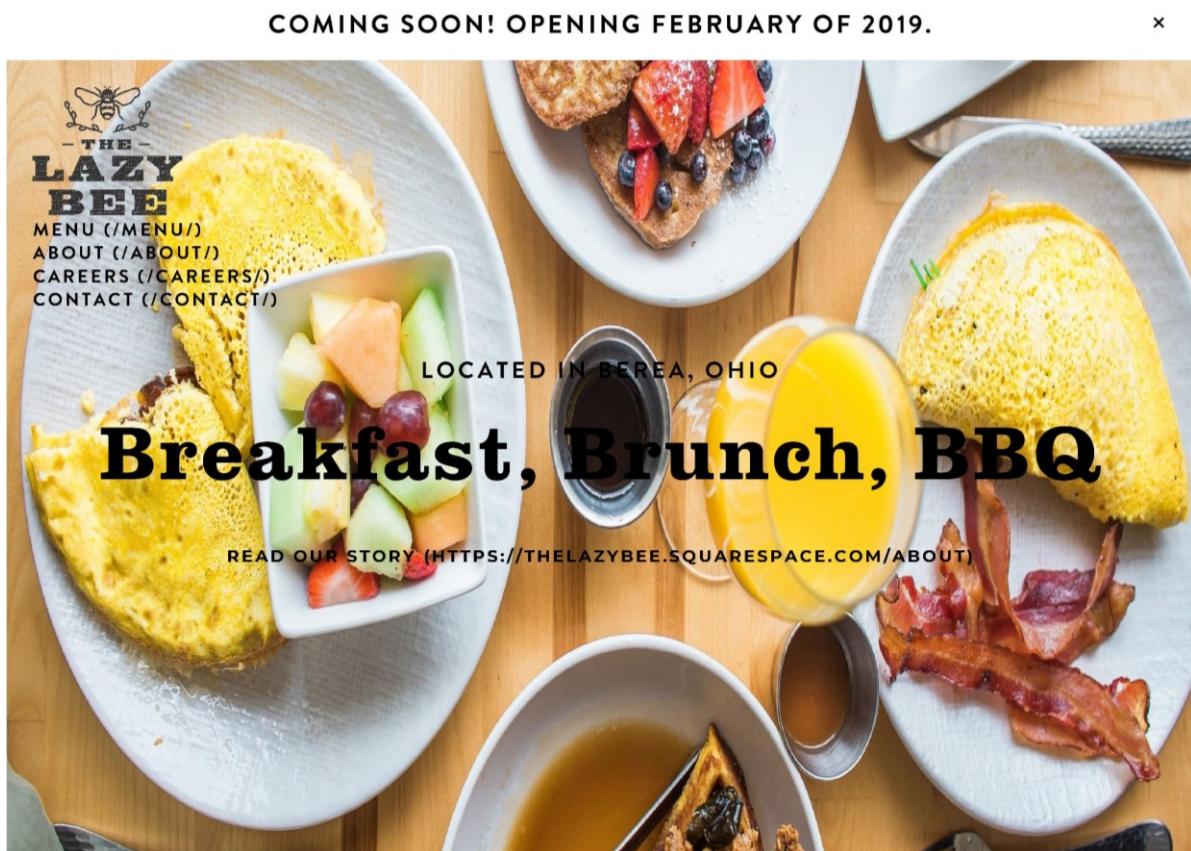
“SLEEPY BEE” service mark for café and restaurant services. On or about November 4, 2014, the USPTO issued the ’986 Registration to Wee Hive for its “SLEEPY BEE” service mark for café and restaurant services.

13. Wee Hive continues to expand its SLEEPY BEE café and restaurant business and currently operates multiple SLEEPY BEE restaurants within the State of Ohio, including those located at Eighth Fourth Street, Cincinnati, Ohio 45202; 3098 Madison Road, Cincinnati, Ohio 45209; and at 9514 Kenwood Road, Blue Ash, Ohio 45242. A sample menu illustrating the “SLEEPY BEE” service mark in use is shown below.



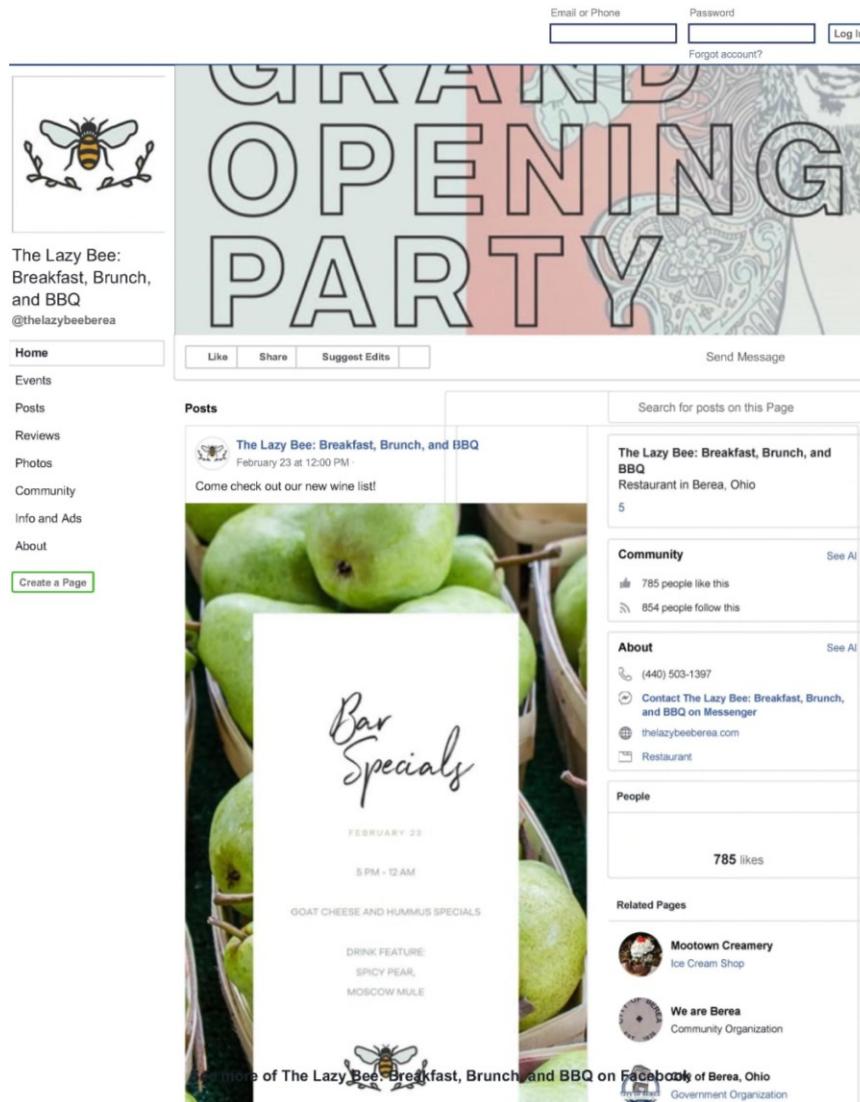
14. On information and belief, Lazy Bee Breakfast has used and is using, without Wee Hive's authorization, permission, or license, the unregistered "LAZY BEE" service mark and bumble bee logo to promote café, restaurant, or like food services in or about the State of Ohio, and specifically within this judicial district.

15. More specifically, on information and belief, Lazy Bee Breakfast operates or controls an Internet website at <https://www.thelazybeeberea.com> which, as shown below, includes the use of the unregistered "LAZY BEE" service mark and bumble bee logo to promote café or restaurant services in or about the State of Ohio, and specifically within this judicial district.



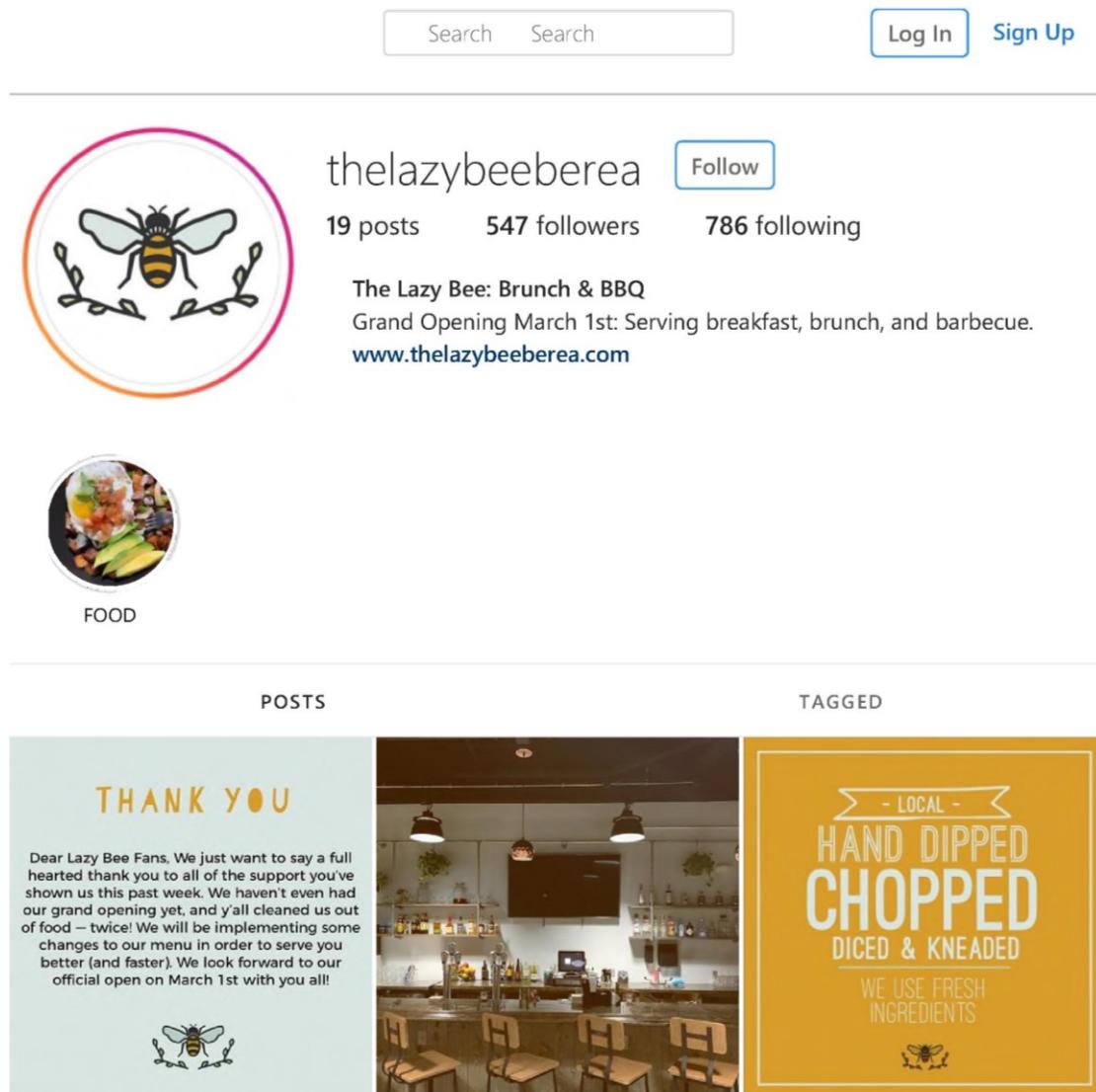
See <https://www.thelazybeeberea.com> (last visited Feb. 25, 2019).

16. Additionally, on information and belief, Lazy Bee Breakfast operates or controls a Facebook page at <https://www.facebook.com/thelazybeeberea> which, as shown below, includes the use of the unregistered “LAZY BEE” service mark and bumble bee logo to promote café or restaurant services in or about the State of Ohio, and specifically within this judicial district.



See <https://www.facebook.com/thelazybeeberea> (last visited Feb. 25, 2019).

17. Additionally, on information and belief, Lazy Bee Breakfast operates or controls an Instagram page at <https://www.instagram.com/thelazybeeberea> which, as shown below, includes the use of the unregistered “LAZY BEE” service mark and bumble bee logo to promote café or restaurant services in or about the State of Ohio, and specifically within this judicial district.



The screenshot shows the Instagram profile for the user 'thelazybeeberea'. At the top, there are two search bars and buttons for 'Log In' and 'Sign Up'. Below the header, the profile picture is a circular logo featuring a bumble bee on a branch, with a pink and orange gradient background. The profile name 'thelazybeeberea' is displayed in a sans-serif font, with a 'Follow' button to its right. Below the name, it shows '19 posts', '547 followers', and '786 following'. The bio reads: 'The Lazy Bee: Brunch & BBQ' and 'Grand Opening March 1st: Serving breakfast, brunch, and barbecue. www.thelazybeeberea.com'. Below the bio is a thumbnail image of a meal labeled 'FOOD'. At the bottom of the profile, there are two sections: 'POSTS' and 'TAGGED'. The 'POSTS' section contains a post with a 'THANK YOU' message to fans, a photo of the restaurant interior, and a promotional graphic for 'HAND DIPPED CHOPPED DICED & KNEADED' using fresh ingredients. The 'TAGGED' section is currently empty.

See <https://www.instagram.com/thelazybeearea> (last visited Feb. 25, 2019).

18. On information and belief, Lazy Bee Breakfast is also using, as shown below, the unregistered “LAZY BEE” service mark and bumble bee logo on one or more shirts or other apparel items to promote café, restaurant, or like food services.



See <https://www.thelazybeeberea.com/about> (last visited Feb. 25, 2019).

19. On information and belief, Lazy Bee Breakfast is also using the unregistered “LAZY BEE” service mark at one or more locations on a building or structure in this judicial district, specifically, as shown below, at or about 126 Front Street, Berea, Ohio 44017, to promote café, restaurant, or like food services.



See

<https://www.facebook.com/thelazybeeberea/photos/a.342693049796897/357304518335750/?type=3&theater> (last visited Feb. 25, 2019).

20. On information and belief, Lazy Bee Breakfast is also using the unregistered “LAZY BEE” service mark and bumble bee logo, as shown below, on one or more menus being used to promote café or restaurant services in or about the State of Ohio, and specifically within this judicial district.



See

https://static1.squarespace.com/static/5b649ff6b10598e51f80f043/t/5c59e17a9b747a73a8417ec3/1549394298719/Main+Menu_R5.pdf (last visited Feb. 25, 2019).

21. As is apparent from the above, Lazy Bee Breakfast uses the unregistered “LAZY BEE” service mark and bumble bee logo in connection with the same services as the services for which Wee Hive registered its “SLEEPY BEE” service mark, namely for café and restaurant services.

22. On information and belief, Lazy Bee Breakfast has had actual knowledge of Wee Hive’s registered “SLEEPY BEE” service mark and its senior use in commerce for café and restaurant services since at least September 28, 2018.

23. On information and belief, Lazy Bee Breakfast has no basis on which to claim superior right over Wee Hive’s federally registered “SLEEPY BEE” service mark.

24. Lazy Bee Breakfast has used, and is using, the unregistered “LAZY BEE” service mark and bumble bee logo without authorization, consent or permission from Wee Hive. Such unauthorized use of is likely to cause confusion and mistake, and to deceive consumers as the source of Lazy Bee Breakfast’s café and restaurant services, and therefore, constitutes trademark infringement and unfair competition.

FIRST CLAIM FOR RELIEF

Infringement of Federally Registered Mark
15 U.S.C. § 1114(1)

25. Wee Hive repeats and realleges the preceding paragraphs as though set forth fully herein.

26. This claim is for the infringement of a service mark registered on the Principal Register of the USPTO under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)(a), as amended.

27. Lazy Bee Breakfast's use of the unregistered "LAZY BEE" service mark and bumble bee logo in connection with advertising, promoting, and offering café and restaurant services, without Wee Hive's authorization, permission, or consent, is likely to cause confusion, or to cause mistake, or to deceive consumers regarding the approval, sponsorship, license, source or origin of Lazy Bee Breakfast's café and restaurant services.

28. On information and belief, Lazy Bee Breakfast's acts of infringement have been done willfully and deliberately, and with full knowledge of Wee Hive's "SLEEPY BEE" service mark.

29. Lazy Bee Breakfast's willful and deliberate acts of infringement have caused, are causing, and will continue to cause injury to Wee Hive, including, but not limited to, irreparable injury to Wee Hive's goodwill and reputation.

30. Unless enjoined, Lazy Bee Breakfast's wrongful conduct will continue to cause irreparable injury to Wee Hive, whereby Wee Hive will have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

Federal Unfair Competition – False Designation of Origin
15 U.S.C. §1125(a)(1)(A)

31. Wee Hive repeats and realleges the preceding paragraphs as though set forth fully herein.

32. This claim is for unfair competition and false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), as amended.

33. Lazy Bee Breakfast's use of the unregistered "LAZY BEE" service mark and bumble bee logo in connection with advertising, promoting, and offering café and restaurant services, without Wee Hive's authorization, permission, or consent, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Lazy Bee Breakfast with Wee Hive, or as to the origin, sponsorship, or approval of Lazy Bee Breakfast's goods, services, or commercial activities by Wee Hive.

34. On information and belief, Lazy Bee Breakfast's acts have been done willfully and deliberately, and with full knowledge of Wee Hive's federally registered "SLEEPY BEE" service mark.

35. Lazy Bee Breakfast's willful and deliberate acts have caused, are causing, and will continue to cause injury to Wee Hive, including, but not limited to, irreparable injury to Wee Hive's goodwill and reputation.

36. Unless enjoined, Lazy Bee Breakfast's wrongful conduct will continue to cause irreparable injury to Wee Hive, whereby Wee Hive will have no adequate remedy at law.

THIRD CLAIM FOR RELIEF

Unfair Competition in Violation of Ohio's Deceptive Trade Practices Act **OHIO REV. CODE § 4165.02**

37. Wee Hive repeats and realleges the preceding paragraphs as though set forth fully herein.

38. This claim is for unfair competition in violation of Ohio's Deceptive Trade Practices Act, OHIO REV. CODE § 4165.02.

39. Lazy Bee Breakfast has engaged in deceptive trade practices by causing the likelihood of confusion or misunderstanding as to whether Wee Hive is the source, sponsorship, approval, or certification of Lazy Bee Breakfast's goods or services.

40. Lazy Bee Breakfast has also engaged in deceptive trade practices by causing the likelihood of confusion or misunderstanding as to whether it has an affiliation, connection, or association with, or certification by Wee Hive.

41. On information and belief, Lazy Bee Breakfast's acts have been done willfully and deliberately, and with full knowledge of Wee Hive's federally registered "SLEEPY BEE" service mark.

42. Lazy Bee Breakfast's willful and deliberate acts have caused, are causing, and will continue to cause injury to Wee Hive, including, but not limited to, irreparable injury to Wee Hive's goodwill and reputation.

43. Unless enjoined, Lazy Bee Breakfast's wrongful conduct will continue to cause irreparable injury to Wee Hive, whereby Wee Hive will have no adequate remedy at law.

Fourth CLAIM FOR RELIEF

Common Law Unfair Competition

44. Wee Hive repeats and realleges the preceding paragraphs as though set forth fully herein.

45. This claim is for common law unfair competition.

46. Lazy Bee Breakfast's acts constitute unfair competition under the common law of the State of Ohio.

47. On information and belief, Lazy Bee Breakfast's acts have been done willfully and deliberately, and with full knowledge of Wee Hive's federally registered "SLEEPY BEE" service mark.

48. Lazy Bee Breakfast's willful and deliberate acts have caused, are causing, and will continue to cause injury to Wee Hive, including, but not limited to, irreparable injury to Wee Hive's goodwill and reputation.

WHEREFORE, Plaintiff Wee Hive, LLC prays for judgment against Defendant The Lazy Bee Breakfast LLC finding that:

- A) Lazy Bee Breakfast's use of the unregistered "LAZY BEE" service mark and bumble bee logo for café and restaurant services in the State of Ohio constitutes federal service mark infringement under the Lanham Act;
- B) A preliminary and permanent injunction are warranted prohibiting and enjoining Lazy Bee Breakfast, its officers, directors, agents, employees, subsidiaries, affiliates, assigns, licensees and any one acting in concert with Lazy Bee Breakfast from further infringement of Wee Hive's federally registered "SLEEPY BEE" service mark;
- C) Wee Hive is entitled to an award of all profits and gains that Lazy Bee Breakfast has obtained from its wrongful use of the unregistered "LAZY BEE" service mark and bumble bee logo for café and restaurant services;
- D) Wee Hive is entitled to an award of all compensatory and punitive damages available under the Lanham Act;

E) Wee Hive is entitled to an award of treble damages, costs disbursements and attorney's fees pursuant to 15 U.S.C. § 1117 and OHIO REV. CODE § 4165.03(B);

F) Wee Hive is entitled to any such other relief, damages and costs as the Court deems just and proper.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

Date: February 26, 2019

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DEMAND FOR JURY TRIAL

Pursuant to FED. R. CIV. P. 38(b), Plaintiff Wee Hive, LLC, by its attorneys, hereby demands trial on all issues raised by this Complaint.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

Date: February 26, 2019

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